MEMORANDUM OF AGREEMENT
KLAMATH RIVER/LOST RIVER TMDL DEVELOPMENT

I. Parties to the Agreement

The parties to this agreement are: the Oregon Department of Environmental Quality (ODEQ); the North Coast Regional Water Quality Control Board (NCRWQCB); and Region IX and Region X of the U.S. Environmental Protection Agency (USEPA).

II. Stipulations

Whereas,

A. Portions of the Klamath River and Lost River are located in both California and Oregon, and

B. The Klamath River below Upper Klamath Lake to the Pacific Ocean and the Lost River are listed on both the Oregon and California Clean Water Act Section 303(d) lists for various water quality parameters; and

C. The federal Clean Water Act requires the establishment of total maximum daily loads (TMDLs) for water bodies that are listed on the states' Section 303(d) lists; and

D. The U.S. Environmental Protection Agency is under a court order to ensure completion of TMDLs for the California portions of the lower Lost River by July 2006, and for the Klamath River mainstem by December 2007, and is required to establish these TMDLs if the State fails to do so by the court-ordered deadlines; and

E. The U.S. Environmental Protection Agency is obligated under a Consent Decree to meet a defined schedule for establishing TMDLs in Oregon; and

F. ODEQ and NCRWQCB agree that the timely availability of water quality models developed by PacifiCorp could be a key factor in meeting the consent decree deadlines, given the time and resources currently available for the project; and

G. The Parties to this Memorandum agree that Oregon Department of Environmental Quality and the North Coast Regional Water Quality Control Board are governmental entities designated to adopt TMDLs within their respective jurisdictions.

The parties to this Memorandum agree to the following:

III. Roles and Responsibilities

A. ODEQ and NCRWQCB are the lead agencies for adopting TMDLs in their respective jurisdictions; and are jointly responsible for:

1. Resolving potential conflicts between Oregon water quality standards and California water quality objectives associated with cross boundary water bodies;

2. Establishing appropriate water quality targets for each TMDL that ensure attainment of Oregon water quality standards and California water quality objectives, as appropriate;

3. Identifying appropriate model scenarios as needed to determine loading capacities;

4. Establishing loading capacities, TMDLs, load allocations, and waste load allocations, as appropriate;

5. Including in the TMDLs a reasonable margin of safety (safety factor);

6. Preparing necessary TMDL documents for submittal to USEPA for approval (Note: Unless otherwise agreed to, it is expected that NCRWQCB and ODEQ will prepare individual TMDL documents. Technical analyses for loading capacities, allocations, etc. will likely be joint documents that will be appended to the individual documents.);

7. Conducting public awareness or outreach programs as necessary to inform and educate affected stake holders concerning TMDL development.

8. Directing field staff to assist in data collection for the TMDL as feasible.

9. For ODEQ, determining those sources that will be established as nonpoint source designated management agencies in the TMDLs.

B. Except as otherwise noted, USEPA Regions 9 and 10 are jointly responsible for:

1. Providing technical assistance through review of draft products;

2. Consulting with affected Indian tribes as necessary under Executive Order 13175;

3. Fulfilling federal responsibilities under the Endangered Species Act;

4. Providing contract management services for technical support through the USEPA nationwide watershed contract vehicles. Region 10 shall manage the contract, in accordance with federal procedures.

C. All parties will coordinate in dealing with other agencies active in water quality or water quality-related activities in the Klamath Basin.

IV. Points of Agreement

A. While ODEQ and NCRWQCB may fulfill their responsibilities jointly or separately, the states are committed to:

1. Coordinating on data collection activities, including data collection protocols, quality assurance and quality control, and timing and locations of monitoring activities;
2. Sharing data;
3. Developing analytical tools that provide seamless and coordinated coverage across state lines;
4. Sharing draft work products;
5. Coordinating stakeholder involvement efforts to the extent feasible;
6. Meeting downstream water quality standards or water quality objectives, as appropriate; and
7. Sharing drafts of communications affecting the states abilities and effectiveness in carrying out the states' responsibilities and fulfilling their commitments.

B. All parties agree to resolve any conflicts at the lowest possible level within their respective organizations and will elevate unresolved issues within their respective organizations to the signatories to this agreement as necessary to resolve conflicts. The following levels will be followed to resolve conflicts between all parties:

1. Steve Kirk, Senior Water Quality Specialist (ODEQ), David Leland, Senior Water Resource Control Engineer, TMDL Development Unit (NCRWQCB), Gail Louis, Environmental Protection Specialist and Janet Hashimoto, Chief, Monitoring and Assessment Office, Water Division (EPA Region 9), Mark Filippini, TMDL Coordinator, Watershed Restoration Unit, Water Division (EPA Region 10)

2. Dick Nichols, Manager, Eastern Region, Water Quality Division and Greg Aldrich, Manager, Watershed Management Division (ODEQ), Ranjit Gill, Environmental Program Manager, Watershed Management Division (NCRWQCB), Maria Rea, Senior Policy Advisor to the Director, Water Division and Karen Schwinn, Associate Director, Water Division (EPA Region 9), Christine Psyk, Manager, Watershed Restoration Unit, Water Division (EPA Region 10)

3. Joni Hammond, Administrator, Eastern Region (ODEQ), Catherine Kuhlman, Executive Officer (NCRWQCB), Alexis Strauss, Director, Water Division (EPA Region 9), Randy Smith, Director, Office of Water (EPA Region 10)

C. USEPA, ODEQ, and NCRWQCB will jointly review and agree to "Statement of Work" provisions in any and all Requests for Proposals and Contracts performed through the USEPA nationwide watershed contract vehicle relative to the TMDL work associated with this Memorandum.

D. USEPA actions:

1. Obligated funding in the amount of $300,000 towards the nationwide watershed contract vehicle to acquire necessary technical resources to:
    a. complete a water quality assessment in those water bodies that are 303d listed. The assessment will identify water quality deficiencies and potential sources of the water quality problems.
    b. Develop water quality models for the mainstem Lost and mainstem Klamath Rivers, or other technical tools as necessary, that will be suitable for determining loading capacity for appropriate water quality parameters that affect 303d listed water quality parameters
2. Ensure that EPA contractors provide ODEQ and NCRWQCB access to and use of all water quality models and other analytical tools developed for the TMDL work covered by this Memorandum.
3. Ensure that EPA contractors provide ODEQ and NCRWQCB monthly updates of work so that information can be used in stake holder informational meetings.

E. NCRWQCB actions:

1. Through the State Water Resources Control Board, pursue funding in the amount of $200,000 to assist with the completion of the TMDLs, and make all efforts to match any future contributions made by EPA Region 9.

2. Manage state contract funds and matching funds committed by other entities, if any.

F. All parties agree to make every effort to provide additional funding for calibrating, validating and applying the water quality models using scenarios requested by ODEQ and NCRWQCB to enable ODEQ and NCRWQCB to determine loading capacities and appropriate allocations.

G. All parties agree to meet quarterly with affected tribes, NOAA Fisheries, and US Fish and Wildlife Service to brief these parties on TMDL scope, workplan, timelines, methods, models, and draft products, and elicit their comments and recommendations.

H. All parties agree that, if an external expert review of the TMDLs is necessary, the parties shall work together to design and administer a review process.

V. Schedule

ODEQ and NCRWQCB are committed to meeting the current dates for completing technical TMDLs for the Lost and Klamath Rivers. If EPA elects to establish Klamath or Lost River TMDLs, they may use the NCRWQCB technical TMDL analysis as a Technical Support Document. As noted in II.D above, ODEQ and NCRWQCB are further committed to meeting interim deadlines as follows:

A. Lost River TMDLs:

1. Development of a functional model or models of the Lost River mainstem on or before June 2004;
2. Collection of any additional data needed for Lost River model calibration, validation and application during the 2004 summer field season;
3. Issuance of Draft Technical TMDLs for the Lost River mainstem on or before March 2005;
4. Issuance of Final Technical TMDLs for the Lost River mainstem TMDLs on or before on or before June 2005;
5. NCRWQCB and ODEQ adoption of Lost River mainstem TMDLs on or before June 2006.
6. USEPA establishment of federal TMDLs for California portion of Lost River mainstem using the State's Technical TMDLs as a Technical Support Document on or before July 2006 in compliance with court order.
7. California submittal of Lost River mainstem TMDLs, following approval by State Water Resources Control Board and Office of Administrative Law, to USEPA on or before March 2007; and
8. USEPA approval of California's Lost River mainstem TMDLs on or before April 2007 and withdrawal of federal TMDLs.

B. Klamath River mainstem TMDLs:

1. Development of a functional model or models of the Klamath River mainstem on or before June 2004;
2. Collection of any additional data needed for Klamath River model calibration, validation and application during the 2004 summer field season;
3. Issuance of Draft Technical TMDLs for the Klamath River mainstem on or before August 2005;
4. Issuance of Final Technical TMDLs for the Klamath River mainstem on or before December 2005;
5. NCRWQCB and ODEQ adoption of Klamath River mainstem TMDLs on or before October 2006;
6. California submittal of Klamath River mainstem TMDLs, following approval by State Water Resources Control Board and Office of Administrative Law, to USEPA on or before July 2007; and
7. US EPA approval of California's Klamath River mainstem TMDLs on or before August 2007.

Any changes to the above schedule shall be agreed to by all parties and documented through written correspondence.

VI. Reservation of Rights

A. Nothing in this MOA is intended to restrict the authority of any party to act as provided by law, statute or regulation.

B. This MOA is not intended to, and does not create, any right, benefit or trust responsibility by any party against the United States, the State of California, the State of Oregon, its agencies, its officers, or any person.

C. This MOA is an internal agreement between the parties and does not confer any right or benefit on any third person or party, private or public.

VII. Severance

A. This document will expire on the date that USEPA approves all of the TMDLs covered by this Memorandum.

B. A party may terminate its participation 30 days after written notification to the other parties of this agreement.

VIII. Signatures of Parties

_____	_____
Joni Hammond Administrator Eastern Region Oregon Department of Environmental Quality	Catherine Kuhlman Executive Officer California Regional Water Quality Control Board, North Coast Region
_____	_____
Alexis Strauss Director, Water Division Region 9, US EPA	Randy Smith Director, Office of Water Region 10, US EPA